

THIS DISPOSITION IS NOT CITABLE AS PRECEDENT
OF THE TTAB JULY 28, 97

Paper No. 16
RLS/LCB

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Universal Electronics Inc.

Serial No. 74/591,009

Robert E. Browne of Altheimer & Gray for applicant.

Kevin R. Peska, Trademark Examining Attorney, Law Office 102
(Myra K. Kurzbard, Managing Attorney).

Before Simms, Cissel and Quinn, Administrative Trademark
Judges.

Opinion by Simms, Administrative Trademark Judge:

Universal Electronics Inc. (applicant), an Illinois corporation, has appealed from the final refusal of the Trademark Examining Attorney to register the mark KIDS CLICKER for goods subsequently identified as universal remote control units which are programmable to eliminate user access to select television channels and/or programs.¹ The Examining Attorney has refused registration under

¹ Application Serial No. 74/591,009, filed October 26, 1994, based upon applicant's bona fide intention to use the mark in commerce under Section 1(b) of the Act, 15 USC §1051(b).

Section 2(e)(1) of the Act, 15 USC §1052(e)(1), arguing that applicant's mark is merely descriptive of its goods.²

Applicant and the Examining Attorney have submitted briefs, but no oral hearing was requested.

According to the Examining Attorney, applicant's mark is descriptive of the intended users of applicant's remote control units, which the Examining Attorney contends are also called "clickers". It is the Examining Attorney's position that the combination of two descriptive terms in this case results in nothing more than a merely descriptive composite mark without the creation of an unusual or incongruous combination. Therefore, no imagination is required to understand the nature and users of applicant's goods, according to the Examining Attorney. Applicant's mark immediately tells the purchasing public that applicant's remote control units ("clickers") are designed to limit access by kids to various objectionable programming.

In support of his position, the Examining Attorney has submitted a dictionary definition of the word "kid," copies of electronic versions of various third-party registrations wherein the word "KIDS" is disclaimed, numerous excerpts from the Lexis/Nexis database showing the term "clicker" used descriptively or generically, and copies of applicant's

² The Examining Attorney has withdrawn an earlier refusal under Section 2(d) of the Act, 15 USC §1052(d), on the basis of Registration No. 1,588,022, issued March 20, 1990, for the mark KIDDIE KLIKER for children's toys, namely, simulated electronic remote control units.

responses in other cases wherein applicant has disclaimed the term "CLICKER" in connection with its remote control units and has admitted that "the term 'clicker,' standing alone, is merely descriptive in relation to a remote control unit." Response, p. 7, filed March 26, 1996.³

Applicant, on the other hand, argues that its mark is "a highly distinctive mark and at most suggestive" (brief, 1), and that the term "KIDS CLICKER" does not conjure up the image of a remote control unit, but rather requires thought and imagination to understand the nature of applicant's goods. Applicant also maintains that its goods are "particularly directed" to adults who use the programmable functions of the units to limit or block access to certain TV channels and programs. In this regard, applicant maintains that children are not the intended purchasers or users of applicant's goods, but rather are merely the beneficiaries. While the term "clicker" may be descriptive, according to applicant the terms of its mark are "combined in a unique and distinctive manner." Brief, 9.

Although the individual word "CLICKER" when used alone, may be descriptive, the combination of this word with "KIDS" forms a distinctive mark when used on Applicant's programmable universal remote controls. The Examining Attorney determined that Applicant's mark was descriptive based upon the incorrect assumption "that the goods are intended to limit access to programs and/or channels by kids." However, the

³ In those cases, applicant successfully sought registration of the mark "SPORTS CLICKER" and "SPORTS CLICKER" and design.

intended customers and users of Applicant's goods are not children. In fact, Applicant's goods are particularly directed at adults who want to limit access to television channels and programs. . .

Even if the individual elements of the mark "KIDS CLICKER" were deemed descriptive when used with Applicant's goods, the mark can still be found registrable. Although the Examining Attorney relies on the independent definitions of "KIDS" and "CLICKER" in holding Applicant's mark is merely descriptive of Applicant's goods, when the words are combined into "KIDS CLICKER", the mark as a whole does not tell a relevant purchaser what product is being offered. . .

The mark "KIDS CLICKER" taken as a whole, is not descriptive of remote control units. Children or kids are not the intended purchasers of the goods, nor are they the intended users of the unique features of such goods. In fact, Applicant's universal remote controls are particularly directed at adults who want to control what channels and programs can be accessed through the use of their universal remote controls. (This product will have tremendous benefits to the families and to the public in general.) The fact that a child may actually push a button on such a remote control is not enough to reject the subject mark.

Brief, 6, 7, 10. Elsewhere, applicant states that its goods are not used exclusively by children, but that its goods will be used by adults and older children.

Upon careful consideration of this record and the arguments of the attorneys, we agree with the Examining Attorney that applicant's asserted mark is, at a minimum,

merely descriptive. With respect to the term "clicker," as the Examining Attorney has pointed out, applicant has disclaimed this term in two other applications and has conceded that this term is merely descriptive or generic, "standing alone."⁴ Moreover, the Lexis/Nexis excerpts further demonstrate the descriptive, if not generic, nature of the term "clicker."

Rejected by loved ones because you hog
the remote? Condemned by jealous
comrades for your dazzling capability
with the clicker?

The Palm Beach Post, July 24, 1995

* * * * *

What I am hoping for is that someone
invents a wondrously easy-to-use
"universal" remote control device -- one
clicker that will free me from all my
other clickers.

The Boston Herald, July 23, 1995

* * * * *

... it is very easy to tune out nowadays
-- you don't even have to walk across
the room -- you just touch a button on
the remote control. "The Clicker is the
enemy," a showbiz mogul once explained
to me.

The Washington Post, July 16, 1995

* * * * *

... prototype flashed logos of the NFL,
the NBA, the NHL, Major League Baseball
and the NCAA. The plan is for customers
to eventually use their remote-control
clickers to access games, customized and
uncustomized stats, special interview

⁴ In its response filed March 26, 1996, p. 7, applicant argued that registration here would not deprive consumers or competitors "from using the generic name of Applicant's goods (i.e. clicker, remote control, remote, etc.)."

shows, displays of sports paraphernalia,
simulated games and a long...
Sports Illustrated, July 3, 1995

* * * * *

... Food-borne bacteria can live for
hours, even days, on skin and household
surfaces -- such as countertops, phones
and remote-control clickers -- until
they're picked up by somebody's hand and
eventually make their way into the
mouth.
The San Francisco Chronicle, June 21,
1995

* * * * *

Maybe the fishing's not as good as it
once was. Maybe amenities have come to
the marshes. But the remote-control
clicker is not likely to make much of an
impact out here.
Newsday, May 31, 1995

* * * * *

... speakers and other components.
Through the new box you can control all
the components with a single button on
one remote control clicker.
Forbes, May 22, 1995

* * * * *

It is the part of maleness that can be
defined by beer, testosterone and the
remote control clicker, not necessarily
in that order.
The Washington Post, May 17, 1995

* * * * *

... include placing the dummy dudes at
the dinner table (reading a newspaper,
of course) or on the couch (gripping a
remote-control clicker, natch).
The Boston Globe, April 9, 1995

* * * * *

... ADHD appear throughout our culture:
"The fast pace. The sound bite. The
bottom line. Short takes, quick cuts.
The TV remote-control clicker."
Washingtonian, April 1995

While it is true that applicant's "clickers" may be designed to be programmable by adults to eliminate access to certain channels and/or programs, it is clear to us from a reading of the arguments in this case that applicant's units are designed so that children (kids) who use the devices will not be able to watch certain programs and/or channels. While applicant has made much of the fact that its devices are intended to be purchased and programmed by adults, it seems to us elementary that these devices are designed to prevent children from watching certain programs and/or channels. That is, these remote control devices or clickers may be safely used by children without any fear on the part of the parents that the children may watch objectionable programs. In this context, we have no doubt but that applicant's mark is, at a minimum, merely descriptive of the goods in that it combines a name of the goods (clicker) with a reference to the intended users of the goods. See, for example, *In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110 (Fed. Cir. 1987) ("SCREENWIPES") and *Eastern Air Lines, Inc. v. New York Air Lines, Inc.*, 559 F. Supp. 1270, 218 USPQ 71 (SDNY 1983) ("Air-shuttle").

Decision: The refusal of registration is affirmed.

R. L. Simms

Serial No. 74/591,009

R. F. Cissel

T. J. Quinn
Administrative Trademark Judges
Trademark Trial and Appeal Board